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**Board of Vocational Nursing
and Psychiatric Technicians**

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**BEFORE THE
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. VN-2008-1789

**FRANCIS XAVIER TORTORA
1804 Pepper Street, Apt. H
Alhambra, CA 91801**

A C C U S A T I O N

Vocational Nurse License No. VN 197641

Respondent.

Complainant alleges:

PARTIES

1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Board of Vocational Nursing and Psychiatric Technicians, Department of Consumer Affairs.

2. On or about December 12, 2001, the Board of Vocational Nursing and Psychiatric Technicians issued Vocational Nurse License Number VN 197641 to Francis Xavier Tortora (Respondent). The Vocational Nurse License was in full force and effect at all times relevant to the charges brought herein and will expire on September 30, 2013, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Vocational Nursing and Psychiatric Technicians (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Business and Professions Code (Code) section 118, subdivision (b), provides:

The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.

5. Section 2875 of the Code provides, in pertinent part, that the Board may discipline the holder of a vocational nurse license for any reason provided in Article 3 (commencing with section 2875) of the Vocational Nursing Practice Act.

6. Section 2892.1 of the Code states, in pertinent part:

Except as provided in Sections 2892.3 and 2892.5, an expired license may be renewed at any time within four years after its expiration upon filing of an application for renewal on a form prescribed by the board, payment of all accrued and unpaid renewal fees, and payment of any fees due pursuant to Section 2895.1.

STATUTORY PROVISIONS

7. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

(a) Considering the denial of a license by the board under Section 480; or

(b) Considering suspension or revocation of a license under Section 490. Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

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1 8. Section 490 of the Code states:

2 (a) In addition to any other action that a board is permitted to take against a
3 licensee, a board may suspend or revoke a license on the ground that the licensee has
4 been convicted of a crime, if the crime is substantially related to the qualifications,
5 functions, or duties of the business or profession for which the license was issued.

6 (b) Notwithstanding any other provision of law, a board may exercise any
7 authority to discipline a licensee for conviction of a crime that is independent of the
8 authority granted under subdivision (a) only if the crime is substantially related to the
9 qualifications, functions, or duties of the business or profession for which the
10 licensee's license was issued.

11 (c) A conviction within the meaning of this section means a plea or verdict of
12 guilty of a conviction following a plea of nolo contendere. Any action that a board is
13 permitted to take following the establishment of a conviction may be taken when the
14 time for appeal has elapsed, or the judgment of conviction has been affirmed on
15 appeal, or when an order granting probation is made suspending the imposition of
16 sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of
17 the Penal Code.

18 (d) The Legislature hereby finds and declares that the application of this
19 section has been made unclear by the holding in *Petropoulos v. Department of Real*
20 *Estate* (2006) 142 Cal.App.4th 554, and that the holding in that case has placed a
21 significant number of statutes and regulations in question, resulting in potential harm
22 to the consumers of California from licensees who have been convicted of crimes.
23 Therefore, the Legislature finds and declares that this section establishes an
24 independent basis for a board to impose discipline upon a licensee, and that the
25 amendments to this section made by Senate Bill 797 of the 2007-2008 Regular
26 Session do not constitute a change to, but rather are declaratory of, existing law.

27 9. Section 492 of the Code states, in pertinent part:

28 Notwithstanding any other provision of law, successful completion of any
diversion program under the Penal Code, or successful completion of an alcohol or
drug problem assessment program . . . shall not prohibit any agency . . . from
taking disciplinary action against a licensee or from denying a license for professional
misconduct, notwithstanding that evidence of that misconduct may be recorded
pertaining to an arrest.

. . . .

10. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a
board within the department pursuant to law to deny an application for a license or to
suspend or revoke a license or otherwise take disciplinary action against a person who
holds a license, upon the ground that the applicant or the licensee has been convicted
of a crime substantially related to the qualifications, functions, and duties of the
licensee in question, the record of conviction of the crime shall be conclusive
evidence of the fact that the conviction occurred, but only of that fact, and the board
may inquire into the circumstances surrounding the commission of the crime in order
to fix the degree of discipline or to determine if the conviction is substantially related
to the qualifications, functions, and duties of the licensee in question.

As used in this section, "license" includes "certificate," "permit," "authority," and "registration."

11. Section 2878 of the Code states:

The Board may suspend or revoke a license issued under this chapter [the Vocational Nursing Practice Act (Bus. & Prof. Code, 2840, et seq.)] for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the following:

....

(f) Conviction of a crime substantially related to the qualifications, functions, and duties of a licensed vocational nurse, in which event the record of the conviction shall be conclusive evidence of the conviction.

....

(j) The commission of any act involving dishonesty, when that action is related to the duties and functions of the licensee.

12. Section 2878.5 of the Code states, in pertinent part:

In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Vocational Nursing Practice Act] it is unprofessional conduct for a person licensed under this chapter to do any of the following:

(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist or podiatrist administer to himself or herself or furnish or administer to another, any controlled substance as defined in Division 10 of the Health and Safety Code, or any dangerous drug as defined in Article 8 (commencing with Section 4210) of Chapter 9 of Division 2 of this code.

(b) Use of any controlled substance as defined in Division 10 of the Health and Safety Code, or any dangerous drug as defined in Article 8 (commencing with Section 4210 of Chapter 9 of Division 2 of this code, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public, or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

(c) Be convicted of a criminal offense involving possession of any narcotic or dangerous drug, or the prescription, consumption, or self-administration of any of the substances described in subdivisions (a) and (b) of this section, in which event the record of conviction is conclusive evidence thereof.

....

(e) Falsify, or make grossly incorrect, grossly inconsistent, or unintelligible entries in any hospital, patient, or other record pertaining to narcotics or dangerous drugs as specified in subdivision (b).

13. Section 2878.6 of the Code states:

"A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions and duties of a licensed vocational nurse is deemed to be a conviction within the meaning of this article. The board may order the license suspended or revoked, or may decline to issue a license, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information or indictment."

14. Section 4022 of the Code states:

"Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use in humans or animals, and includes the following:

(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without prescription," "Rx only," or words of similar import.

(b) Any device that bears the statement: "Caution: federal law restricts this device to sale by or on the order of a _____," "Rx only," or words of similar import, the blank to be filled in with the designation of the practitioner licensed to use or order use of the device.

(c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006.

15. Health and Safety Code section 11055 states, in pertinent part:

(a) The controlled substances listed in this section are included in Schedule II.

(b) Any of the following substances, except those narcotic drugs listed in other schedules, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:

(1) Opium, opiate, and any salt, compound, derivative, or preparation of opium or opiate, with the exception of naloxone hydrochloride (N-allyl-14-hydroxy-nordihydromorphinone hydrochloride), but including the following:

....

(K) Metopon.

....

(M) Oxycodone.

....

(N) Oxymorphone.

....

1 16. Health and Safety Code section 11057 states, in pertinent part:

2 (c) Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any
3 material, compound, mixture, or preparation containing any of the following narcotic drugs,
4 or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set
forth below:

5

6 (2) Dextropropoxyphene (alpha-(+)-4-dimethylamino-1, 2-diphenyl-3-methyl-2-
propionoxybutane).

7

8 (d) Depressants. Unless specifically excepted or unless listed in another schedule, any
9 material, compound, mixture, or preparation which contains any quantity of the following
substances, including its salts, isomers, and salts of isomers whenever the existence of those
10 salts, isomers, and salts of isomers is possible within the specific chemical designation:

11

12 (29) Temazepam.

13

14 REGULATORY PROVISIONS

15 17. California Code of Regulations, title 16, section 2518.6 states, in pertinent part:

16 (a) A licensed vocational nurse shall safeguard patients'/clients' health and safety by
actions that include but are not limited to the following:

17

18 (2) Documenting patient/client care in accordance with standards of the profession.

19

20 (b) A licensed vocational nurse shall adhere to standards of the profession and
21 shall incorporate ethical and behavioral standards of professional practice which
include but are not limited to the following:

22

23 (4) Abstaining from chemical/substance abuse.

24

25 18. California Code of Regulations, title 16, section 2521, states, in pertinent part:

26 For the purposes of denial, suspension, or revocation of a license pursuant to
27 Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
crime or act shall be considered to be substantially related to the qualifications,
28 functions or duties of a licensed vocational nurse if to a substantial degree it
evidences present or potential unfitness of a licensed vocational nurse to perform the

functions authorized by his license in a manner consistent with the public health, safety, or welfare. Such crimes or acts shall include but not be limited to those involving the following:

....

(c) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of Chapter 6.5, Division 2 of the Business and Professions Code.

....

(f) Any crime or act involving the sale, gift, administration, or furnishing of "narcotics or dangerous drugs or dangerous devices" as defined in Section 4022 of the Business and Professions Code.

19. California Code of Regulations, title 16, section 2522 states, in pertinent part:

When considering . . . b) the suspension or revocation of a license on the ground that a licensee has been convicted of a crime . . . the Board in evaluating the rehabilitation of an individual and his or her present eligibility for a license, will consider the following criteria:

- (1) Nature and severity of the act(s), offense(s), or crime(s) under consideration.
- (2) Actual or potential harm to the public.
- (3) Actual or potential harm to any patient.
- (4) Overall disciplinary record.
- (5) Overall criminal actions taken by any federal, state or local agency or court.
- (6) Prior warnings on record or prior remediation.
- (7) Number and variety of current violations.
- (8) Mitigation evidence.
- (9) In case of a criminal conviction, compliance with terms of sentence and/or court-ordered probation.
- (10) Time passed since the act(s) or offense(s) occurred.
- (11) If applicable, evidence of proceedings to dismiss a conviction pursuant to Penal Code section 1203.4.
- (12) Cooperation with the Board and other law enforcement or regulatory agencies.
- (13) Other rehabilitation evidence.

COST RECOVERY

20. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

DRUGS

21. **Ativan** is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057(d) and a dangerous drug pursuant to Business and Professions Code section 4022. Ativan is a brand name for the generic drug Lorazepam and is used to treat anxiety.

22. **Darvocet** is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057(c)(2) and a dangerous drug pursuant to Business and Professions Code section 4022. Darvocet is a brand name for the generic drug Propoxyphene napsylate with Acetaminophen and is used to treat pain.

23. **Dilaudid** is a Schedule II controlled substance pursuant to Health and Safety Code section 11055(b)(1)(k) and a dangerous drug pursuant to Business and Professions Code section 4022. Dilaudid is a brand name for the generic drug Hydromorphone and is used to treat pain.

24. **Morphine/Morphine Sulfate** is a Schedule II controlled substance pursuant to Health and Safety Code section 11055(b)(1)(M) and a dangerous drug pursuant to Business and Professions Code section 4022. Morphine is in a class of drugs called narcotic analgesics. It relieves pain.

25. **Oxycodone** is a Schedule II controlled substance pursuant to Health and Safety Code section 11055(b)(1)(N) and a dangerous drug pursuant to Business and Professions Code section 4022. Oxycontin is a trade name of Oxycodone and hydrochloride salt as controlled-release tablets and is used to treat pain.

26. **Phenergan** is not a controlled substance but is a dangerous drug pursuant to Business and Professions Code section 4022. Phenergan is a brand name for the generic drug Promethazine and is used to treat nausea.

27. **Restoril** is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057(d)(29) and a dangerous drug pursuant to Business and Professions Code section 4022. Restoril is a brand name for the generic drug Temazepam and is for short term treatment of insomnia.

28. **Pyxis** is a trade name for the automated single-unit dose medication dispensing system that records information such as patient name, physician orders, date and time medication was withdrawn, and the name of the licensed individual who withdrew and administered the medication. Each user/operator is given a “user ID” code to operate the control panel. The user is required to enter a second code “PIN” number, similar to an ATM machine, to gain access to the medications. Sometimes only portions of the withdrawn narcotics are given to the patient. The portions not given to the patient are referred to as wastage. This waste must be witnessed by another authorized user and is also recorded by the Pyxis machine.

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct-Abstain from Chemical/Substance Abuse)

29. Respondent has subjected his license to disciplinary action under Business and Professions Code sections 2878(a) and 2878.5(a) in that he failed to abstain from chemical and/or substance abuse. The circumstances are as follows:

30. On or about December 26, 2008, Respondent was working as a licensed vocational nurse at a hospital ("Facility 1"). In response to an apparent concern of hospital personnel regarding the misappropriation of controlled substances, the Medication Administration Record and associated 24 Hour Care Records were reviewed. Of all of the controlled substances dispensed under Respondent's user ID and password, 125 were removed with no documentation. None of the 24 Hour Care Records indicated a need for administration of the medication. There were 72 instances of Respondent accessing medications on patients not assigned to him. The other 53 instances involved patients assigned to Respondent, but there was no documentation of administration. The primary medications removed were Dilaudid, Morphine, Ativan, and Xanax.

1 The police were contacted and Respondent was arrested and charged with violating Health and
2 Safety Code section 11350(a)- possession of a controlled substance (hydromorphone); and Penal
3 Code section 487(a)- grand theft from Facility 1 (hydromorphone).

4 **SECOND CAUSE FOR DISCIPLINE**

5 **(Unprofessional Conduct-Abstain from Chemical/Substance Abuse)**

6 31. Respondent has subjected his license to disciplinary action under Business and
7 Professions Code sections 2878(a) and 2878.5(a) in that he failed to abstain from chemical and/or
8 substance abuse. The circumstances are as follows:

9 32. On or about January 9, 2009, Respondent was working as a licensed vocational nurse
10 through a staffing agency, as a medication administration nurse at his assigned facility ("Facility
11 2). Respondent was exhibiting bizarre and unusual behavior and upon questioning by a facility
12 nurse, Respondent could not give a reasonable explanation. Respondent left his medication cart
13 in the same place for an unusually long time during his medication pass. Respondent appeared
14 with his scrub shirt torn down the front from neck to hem, and attempted to staple the garment
15 back together. When he was unsuccessful, he continued his shift wearing the torn garment.
16 Respondent began manhandling the wires on the printer, stating he was "fixing" the printer.
17 Respondent rummaged through drawers and found Geri-sleeves¹, unpackaged them and put them
18 on, claiming he was cold. When asked to remove them, he refused. Respondent was observed
19 taking excessive restroom breaks, he was "constantly going to the bathroom." The Director of
20 Nursing conducted a drug audit and found the seal broken on a Parenteral/Inhalation E-kit, which
21 were kept in the medication room. Several items were missing from the kit, including Narcan,
22 Ativan, Phenergan and Benadryl. The facility nurse checked the restroom, and found a
23 disassembled Parenteral/Inhalation E-kit (emergency medical kit) in the trash. Narcotics
24 including Narcan, Phenergan, Ativan, Oxycodone and Benadryl were missing.

25
26 ¹ With full coverage of the arm from wrist to shoulder, Geri-Sleeves protect the upper
27 extremities from abrasions, bruises, snags and tears throughout the day. Geri-Sleeves use slight
28 compression to aid in relieving the discomfort associated with swelling. They also help provide
relief from problems such as skin breakdown and surface injuries, while protecting the palms of
wheelchair patients. They cover and protect IV sites.

33. Respondent was terminated for suspected theft of narcotic medications. Security personnel searched the facility to ensure that Respondent had left the premises.

34. The staffing agency noted in Respondent's file that it could no longer send Respondent on assignments because of two similar complaints from client facilities.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct-Abstain from Chemical/Substance Abuse)

35. Respondent has subjected his license to disciplinary action under Business and Professions Code sections 2878(a) and 2878.5(a) in that he failed to abstain from chemical and/or substance abuse. The circumstances are as follows:

36. On or about February 23, 2009, Respondent was working as a licensed vocational nurse at a hospital ("Facility 3"). Witness DB encountered Respondent in the break room, and did not recognize him. Respondent was wearing a registry badge, and was dressed in scrubs. DB noticed that Respondent had cash hanging out of his shirt pocket, and she attempted to inform Respondent, but he did not appear to understand. DB left the break room, and when she returned, she observed Respondent going through other nurses' lockers. She assumed he was borrowing a locker because he was new. A short time later, DB returned to the locker room and saw that Respondent's wallet and other nurses' purses were scattered about the room. Respondent was tracked down in the hospital, and detained by security personnel and the police were contacted. The security officer searched Respondent and found that he was in possession of another nurse's (KM) credit card, \$30.00, and various types of medications. Security also searched Respondent's backpack, where it was discovered that he was in possession of multiple medications that he was not authorized to possess. Of the six medications found in the backpack, 16.5 tabs were hydrocodone, or Vicodin. Vials of lorazepam and an ampule of promethazine fell out of Respondent's pants when he was asked to empty his pockets. Upon submission to a urine drug screen, Respondent tested positive for opiates, benzodiazepines, and cannabinoids. Respondent admitted he had a problem with substance abuse, and claimed that he had been injecting for at least a year. Respondent admitted to injecting controlled substances that day, in his car in the

1 parking lot. Respondent admitted that he had been taking controlled substances from the other
2 facilities where he had worked over the past year.

3 37. Upon arrival of the police, nurse KM was questioned and informed the police that she
4 was missing a credit card and \$135.00 in cash. KM was able to provide the police with a detailed
5 description and the exact currency she was missing from her wallet. At that time, the police
6 recovered her credit card and \$35.00 of her missing cash from Respondent. Nurse LM was
7 questioned, and informed the police that she was missing a credit card from her purse.

8 38. Upon examination of Respondent's forearms at the scene, the police discovered that
9 he had red puncture marks running up his arms, on both the left and the right forearms. The
10 officer was able to recognize the marks as injection sites based on his training and experience.

11 39. Upon searching Respondent's vehicle for any other stolen property, the officers
12 recovered marijuana from his vehicle.

13 40. Upon questioning by the officers, Respondent stated that he did not remember if he
14 had taken the victims' credit cards and cash from the break room. Respondent said he did not
15 know where the break room was located. Respondent admitted that he had taken various types of
16 medications, including Vicodin, from the omnicell machine dispenser. Respondent admitted to
17 the officer that he was neither authorized to remove, nor prescribed, those medications.
18 Respondent told the officers he "had never done this before," and he wanted to "experiment" with
19 the medications. Respondent was asked if he had deprived any patient of medication, and he said
20 that he could not remember. Respondent admitted that he had forged medical records regarding
21 the medication that he had dispensed to patients, but he stated he would not be able to point out
22 which documents he forged. Respondent admitted to the officers that he would take hypodermic
23 needles from the hospital and use the medication at home. Respondent admitted that the injection
24 marks on his arms were caused by the injections of the medication that he would take from the
25 hospital. Respondent admitted that if a patient would have "extra medication" dispensed to them
26 on an as-needed basis, Respondent would take the medication for his personal use and not
27 administer it to the patient.
28

41. Respondent was arrested and charged with violating Health and Safety Code section 11350(a) - possession of a controlled substance; and Penal Code section 496(a) - possession of stolen property. Due to Respondent's psychological state, the officer recommended that Respondent be charged with violating Health and Safety Code section 11550(a) - under the influence of a controlled substance; and Penal Code section 484- petty theft.

FOURTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct-Abstain from Chemical/Substance Abuse)

42. Respondent has subjected his license to disciplinary action under Business and Professions Code sections 2878(a) and 2878.5(a) in that he failed to abstain from chemical and/or substance abuse. The circumstances are as follows:

43. On or about May 7, 2009, Respondent was working as a licensed vocational nurse through a different staffing agency at a different assigned facility (Facility 4). Respondent was observed sleeping several times while on duty at the hospital, and multiple staff members attempted to wake him multiple times throughout the shift. Respondent had glassy eyes, constricted pupils, and he was pale. Respondent claimed he had not gotten enough sleep the night before, and had consumed a heavy meal on his break. The supervisor stated that Respondent could not stay awake, and Respondent said that he would walk around in an effort to stay awake. Respondent was subsequently found sleeping several more times. Respondent was told to finish his patient documentation so he could be sent home; however, he could not even log onto the computer because he kept falling asleep. A verbal report was attempted, but Respondent kept repeating himself. A narcotic report was obtained, and it was discovered that Respondent had accessed IV drugs he was not allowed to administer, including Ativan, Morphine, Hydromorphone, Darvocet, and Restoril. Respondent was escorted to the emergency room to be drug tested; however, he refused to be tested. The supervisor called security, but Respondent left before they arrived. Respondent's employer, the staffing agency, immediately instructed Respondent to go for a drug test; however, he again refused, claiming to be ill. Respondent was terminated from the staffing agency for failure to secure an immediate drug test, and failure to address the allegations from the hospital.

1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct-Abstain from Chemical/Substance Abuse)**

3 44. Respondent has subjected his license to disciplinary action under Business and
4 Professions Code sections 2878(a) and 2878.5(a) in that he failed to abstain from chemical and/or
5 substance abuse. The circumstances are as follows:

6 45. On or about February 7, 2010, Respondent was working as a licensed vocational
7 nurse at a hospital (Facility 5). Respondent appeared intoxicated at work during his shift. A
8 medication administration report and an operator transaction narcotic report were obtained, and it
9 was discovered that Respondent had accessed IV drugs he was not allowed to administer,
10 including 12 syringes of morphine and ativan, and failed to document that these medications were
11 administered to any patient. Licensed vocational nurses are not permitted to administer IV
12 medications at this hospital. When questioned, Respondent stated that he was very "hung over"
13 from alcohol use the previous night. He stated that he had no recollection of accessing these
14 medications, despite having used his own thumbprint to access them, and that if he did, he had no
15 idea what he would have done with them.

16 46. The hospital contacted the police to report the theft. Respondent admitted to hospital
17 security and the responding officers that he had stolen the drugs and syringes for his own use.
18 Respondent was arrested for theft. Respondent was fired for "Gross Misconduct."

19 47. After Respondent's arrest, the hospital subsequently refused to press theft charges
20 against Respondent and the criminal matter case was closed.

21 **SIXTH CAUSE FOR DISCIPLINE**

22 **(May 14, 2009 Criminal Conviction for Possession of a**
23 **Controlled Substance on December 26, 2008)**

24 48. Respondent is subject to disciplinary action under Business and Professions Code
25 sections 490 and 2878.5(c) in that he was convicted of a crime substantially related to the
26 qualifications, functions, and duties of a licensed vocational nurse. The circumstances are as
27 follows:
28

1 49. On or about May 14, 2009, in a criminal proceeding entitled *People of the State of*
2 *California v. Francis Xavier Tortora*, in San Diego Superior Court, case number SCD219173,
3 Respondent was convicted by his plea of guilty to violating Health and Safety Code section
4 11350(a) (possession of a controlled substance), and a charge for violation of Penal Code section
5 487(a) (grand theft) was dismissed.

6 50. The details leading to the conviction are set forth in the First Cause for Discipline in
7 paragraphs 29 through 30 above, and incorporated herein as though fully set forth.

8 51. As a result of the conviction, Respondent requested a deferred entry of judgment for
9 18 months, and was ordered to enter a drug rehabilitation program by June 15, 2009. A warrant
10 was issued for his arrest on July 19, 2009, after the court received notice from the rehabilitation
11 facility that Respondent had failed to enroll in the program.

12 **SEVENTH CAUSE FOR DISCIPLINE**

13 **(August 3, 2009 Criminal Conviction for Reckless Driving on December 22, 2007)**

14 52. Respondent is subject to disciplinary action under Business and Professions Code
15 sections 490 and 2878.5(c) in that he was convicted of a crime substantially related to the
16 qualifications, functions, and duties of a licensed vocational nurse. The circumstances are as
17 follows:

18 53. On or about December 22, 2007, in a criminal proceeding entitled *People of the State*
19 *of California v. Francis X Tortora*, in San Diego Superior Court, case number M-047516,
20 Respondent was convicted by plea of guilty to violating Vehicle Code section 23103(a), reckless
21 driving-DUI reduction. In a Declaration in Support of Reducing Charges, dated June 4, 2009, the
22 Deputy City Attorney stated that the reason for the reduction was related to “speedy trial
23 considerations.” Respondent stated in his plea that he “drove recklessly when I had alcohol in my
24 system.”

25 54. As a result of the conviction, August 3, 2009, Respondent was ordered to enroll in the
26 “First conviction program,” MADD, and a substance abuse treatment program under Penal Code
27 section 1000.

55. The facts and circumstances that led to the conviction are as follows: on or about December 22, 2007, Respondent was driving home. The roadway curved downhill, and to the left. Respondent straightened out of the curve and crashed into two parked cars, pushing one of them into a tree. Respondent was in the driver's seat, attempting to back out, when four witnesses came out after hearing the crash. The responding officer stated that he smelled alcohol on Respondent's breath, and asked Respondent several questions. Respondent swayed from side to side and in a circular motion while he stood, and his speech was slurred. Respondent was transported to the hospital for treatment of a laceration on his chin which he sustained in the accident. At the hospital, Respondent urinated on himself, seemed confused, and was unaware of his location. Respondent admitted to the officer that he had been drinking vodka. The officer impounded a vial of Respondent's blood for a blood alcohol content, which was .11%.

EIGHTH CAUSE FOR DISCIPLINE

(January 19, 2010 Criminal Conviction for Possession of a

Controlled Substance and Possession of Stolen Property on February 23, 2009)

56. Respondent is subject to disciplinary action under Business and Professions Code sections 490 and 2878.5(c) in that he was convicted of a crime substantially related to the qualifications, functions, and duties of a licensed vocational nurse. The circumstances are as follows:

57. On or about January 19, 2010, in a criminal proceeding entitled *People of the State of California v. Francis Xavier Tortora*, in San Bernardino Superior Court, case number FSB901340, Respondent was convicted by plea of guilty to violating Health and Safety Code section 11350(a), possession of a controlled substance, and Penal Code section 496(a), possession of stolen property.

58. As a result of the conviction, on or about January 19, 2010, Respondent was sentenced to 90 days in a San Bernardino County jail facility, with credit for time served plus conduct credit, and three years supervised probation with conditions. Respondent was ordered to report to a rehabilitation center on February 2, 2010; ordered to abstain from drugs and alcohol, avoid places where alcohol is the chief item for sale, participate in counseling, make restitution,

1 pay fines and fees, attend Narcotics Anonymous and/or Alcoholics Anonymous three times per
2 week, and have no contact with the victims.

3 59. The facts and circumstances that led to the conviction are detailed above in the Third
4 Cause for Discipline in paragraphs 35 through 41 above, and incorporated herein as though fully
5 set forth.

6 **NINTH CAUSE FOR DISCIPLINE**

7 **(Unprofessional Conduct-Use of Drugs and Alcohol in a Manner Dangerous to the Public)**

8 60. Respondent is subject to disciplinary action pursuant to Business and Professions
9 Code section 2878(a), on the grounds of unprofessional conduct, as defined by Code section
10 2878.5(b), in that he used controlled substances and alcohol in a manner that was dangerous to
11 himself and the public when he drove a vehicle while intoxicated, and took controlled substances
12 that were not prescribed to him while on duty as a licensed vocational nurse. The circumstances
13 are set forth more specifically in paragraphs 29 through 59 above, and incorporated herein as
14 though fully set forth.

15 **TENTH CAUSE FOR DISCIPLINE**

16 **(Convictions Involving the Possession and/or Self-Administration** 17 **of a Controlled Substance and/or the Consumption of Alcoholic Beverages)**

18 61. Respondent is subject to disciplinary action pursuant to Business and Professions
19 Code section 2878(a), on the grounds of unprofessional conduct, as defined by Code section
20 2878.5(c), in that Respondent was convicted of criminal offenses involving the possession and
21 or/self-administration of controlled substances, and the consumption of alcoholic beverages. The
22 circumstances are set forth more specifically in paragraphs 48 through 60 above, and incorporated
23 herein as though fully set forth.

24 **ELEVENTH CAUSE FOR DISCIPLINE**

25 **(Unprofessional Conduct-Commission of Any Act Involving Dishonesty)**

26 62 Respondent is subject to disciplinary action pursuant to Business and Professions
27 Code section 2878(j), on the grounds of unprofessional conduct, in that Respondent stole credit
28 cards and cash from co-workers, and repeatedly and admittedly stole controlled substances and

1 paraphernalia from multiple places of employment for his own recreational use, all while working
2 as a licensed vocational nurse. The circumstances are set forth more specifically in paragraphs 29
3 through 59 above, and incorporated herein as though fully set forth.

4 **TWELFTH CAUSE FOR DISCIPLINE**

5 **(Falsify Entries in Records Pertaining to Narcotic or Dangerous Drugs and Failure to** 6 **Document Patient Care in Accordance with the Standards of the Profession)**

7 63. Respondent is subject to disciplinary action pursuant to Business and Professions
8 Code section 2878(a), on the grounds of unprofessional conduct, as defined by Code section
9 2878.5(e) in conjunction with California Code of Regulations, title 16, section 2518.6(a)(2) in
10 that Respondent repeatedly failed to document patient care, and admitted to falsifying patient
11 records pertaining to narcotics and dangerous drugs. The circumstances are set forth more
12 specifically in paragraphs 29 through 47 above, and incorporated herein as though fully set forth.

13 **DISCIPLINE CONSIDERATIONS**

14 **Previous Convictions**

15 64. To determine the degree of discipline, if any, to be imposed on Respondent,
16 Complainant alleges that on or about August 11, 1999, by Special Court-Martial Convening
17 Order 1-99, Respondent, while enlisted in the United States Navy as a Hospital Corpsman Third
18 Class, at the Naval Hospital in Bremerton, Washington, was arraigned and tried on the following
19 offenses:

20 a. Charge I: Violation of Uniformed Code of Military Justice, Article 92; Failure
21 to Obey Lawful Order, U.S. Naval Service:

22 1. Specification 1: Fail to obey a lawful general order, to wit: Joint Ethics
23 Regulations, by failing to protect and conserve government property from June 1998 to May
24 1999. Respondent pled guilty, and was found to be guilty;

25 2. Specification 2: Violate a lawful regulation, SECNAVINST 5300.28B or
26 C by wrongfully possessing drug abuse paraphernalia from September 1998 to May 1999.
27 Respondent pled guilty, and was found to be guilty.
28

1 b. Charge II: Violation of Uniformed Code of Military Justice, Article 108;
2 Wrongful Use of Government Property, U.S. Naval Service:

3 1. Specification: Willfully suffer, of a value of more than \$100.00, military
4 property of the United States, to be wrongfully disposed of through unwarranted personal use of
5 the property from June 1998 to about May 1999. Respondent pled guilty, and found to be guilty,
6 excepting the words "of a value of more than \$100.00," of the excepted words, the finding was
7 not guilty.

8 c. Charge III: Violation of Uniformed Code of Military Justice, Article 112a;
9 Wrongful Possession and Use of a Controlled Substance, U.S. Naval Service:

10 1. Specification 1: Wrongfully possess some amount of Versed, a Schedule
11 IV controlled substance, from about September 1998 to about May 1999. Respondent pled guilty,
12 and was found to be guilty.

13 2. Specification 2: Wrongfully use Valium from about September 1998 to
14 May 1999. Respondent pled guilty, and was found to be guilty.

15 3. Specification 3: Wrongfully use Versed, a Schedule IV controlled
16 substance, from about September 1998 to about May 199. Respondent pled guilty, and was found
17 to be guilty.

18 65. As a result of the above findings, Respondent was convicted and sentenced on
19 November 2, 1999 to confinement for 100 days, forfeit of \$633.00 pay per month for a period of
20 four months, to be reduced to pay grade E-1, and to be separated from the naval service with a
21 bad conduct discharge. The Commanding Officer, Captain, U.S. Navy, approved the sentence,
22 excepting the bad conduct discharge, and reducing the period of confinement to 90 days.
23 Respondent was sentenced to confinement at the Puget Sound Naval Brig, in Bangor,
24 Washington.

25 Previous Citation

26 66. To determine the degree of discipline, if any, to be imposed on Respondent,
27 Complainant alleges that on or about June 19, 2003, in a prior action, the Board of Vocational
28 Nursing and Psychiatric Technicians issued Citation Number 03-0093-L and ordered Respondent

1 to pay an administrative penalty fine in the amount of \$250.00 for failing to disclose the
2 convictions detailed above on his application for licensure. Respondent answered "No" to the
3 question "have you ever been convicted of any offense, including traffic violations?" Respondent
4 signed the application for licensure under penalty of perjury, attesting to the accuracy and
5 truthfulness of the information on the application.

6 67. That Citation is now final and is incorporated by reference as if fully set forth.

7 **PRAYER**

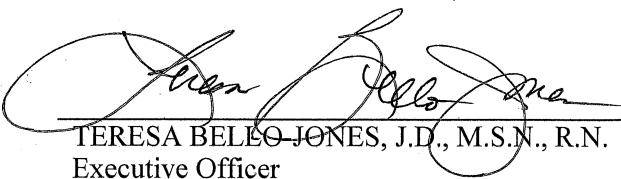
8 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
9 and that following the hearing, the Board of Vocational Nursing and Psychiatric Technicians
10 issue a decision:

11 1. Revoking or suspending Vocational Nurse License Number VN 197641, issued to
12 Respondent Francis Xavier Tortora;

13 2. Ordering Respondent Francis Xavier Tortora to pay the Board of Vocational Nursing
14 and Psychiatric Technicians the reasonable costs of the investigation and enforcement of this
15 case, pursuant to Business and Professions Code section 125.3; and

16 3. Taking such other and further action as deemed necessary and proper.
17
18

19 DATED: FEB 04 2013

20 
21 TERESA BELLO-JONES, J.D., M.S.N., R.N.
22 Executive Officer
23 Board of Vocational Nursing and Psychiatric Technicians
24 Department of Consumer Affairs
25 State of California
26 Complainant
27
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